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Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights on his mission to the European Union*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, on his official visit to the European Union from 19 to 22 June 2017, submitted in accordance with Council resolution 36/10.

During his visit, the Special Rapporteur met with a wide range of European Union officials, permanent representatives business associations, representatives of United Nations agencies and civil society.

The focus of his visit was to examine European Union laws, policies and practices in the field of unilateral sanctions, as well as existing safeguards and remedies. In the report, the Special Rapporteur considers the main institutional and legal features of European Union sanctions and their operation, and then assesses this framework according to international law, including international human rights law. He concludes by making recommendations on how to transition away from the use of unilateral coercive measures.

* The present document was submitted late to reflect the most recent developments.

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Contents

		Page
I.	Introduction	3
II.	The practice of sanctions by the European Union	3
III.	European Union sanctions and international law	4
IV.	Achievements in the field of safeguards, remedies and judicial review	7
V.	Outstanding issues of concern	9
VI.	Recommendations	12

** Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights conducted an official visit to the European Union institutions in Brussels from 19 to 22 June 2017. He held meetings with officials of the European Commission's Service for Foreign Policy Instruments, the European External Action Service and the Council of the European Union. He also met with officials of the European Parliament, and had an opportunity to address the Parliament's Subcommittee on Human Rights on 21 June 2017 to present an overview of the current programme of work and the proposals of the mandate holder. The Special Rapporteur also had a meeting with the Secretary-General of the representative organization of European farmers and the confederation of European agricultural cooperatives (COPA-COGECA) to discuss issues related to the impact on agriculture in the European Union of reciprocal sanctions affecting agricultural products and foodstuffs currently applied by the European Union and the Russian Federation. Finally, the Special Rapporteur discussed issues related to sanctions with several diplomatic missions to the European Union, namely: the Organization of Islamic Cooperation, Russian Federation and Venezuela (Bolivarian Republic of).

2. This visit to Brussels was preceded by informal visits by the Special Rapporteur to the Court of Justice of the European Union in Luxembourg in May 2016, and the Council of Europe and the European Court of Human Rights in Strasbourg in June 2016. Taken all together, these three visits have enabled the Special Rapporteur to get a broad, in-depth understanding of the functioning of the "autonomous" sanctions of the European Union (and of sanctions by Council of Europe member States as far as the European Court of Human Rights was concerned), as well as of concerns that the implementation of these sanctions raise in the field of human rights.

3. The Special Rapporteur expresses his gratitude to European Union officials for this valuable opportunity to hold open and extensive discussions with those in charge of defining, implementing and assessing policies on European Union sanctions, as well as for the explicit commitment of the latter to establishing a continuing dialogue with the mandate holder on issues related to sanctions and the associated human rights concerns.

4. In the present report, the Special Rapporteur aims at presenting an initial assessment of European Union policies and activities in the field of safeguards against and remedies for unilateral coercive measures, and judicial review for affected parties. He also touches upon certain outstanding issues of concern related to the implementation of European Union sanctions that may affect, in some cases, the enjoyment of the human rights of affected parties. He first outlines the main institutional and legal features of European Union sanctions and their operation, and then assesses the legality of such sanctions under international law, including international human rights law.

II. The practice of sanctions by the European Union

5. The European Union and its member States have emerged as major users of sanctions. The European Union currently imposes targeted and sectoral sanctions on 36 countries, in addition to the terrorist groups Al-Qaida and Islamic State in Iraq and the Levant (Da'esh).[1] The sanctions also target natural and legal persons. Although the Special Rapporteur was not able to obtain statistical data on sanctions targeting natural and legal persons or on the sanctions that had been invalidated by the European Union courts, he was informed during his visit by the European External Action Service that the current list of persons targeted between 900 and 1,000 individuals under all European Union and United Nations sanction regimes observed by the European Union.

[1] For a complete list of instruments and targets, see European Commission, Service for Foreign Policy Instruments, "European Union: restrictive measures (sanctions) in force", updated as of 26 April 2017, available on the website of the European External Action Service at https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2017-04-26-clean.pdf.

6. These sanctions on non-European Union States, entities and natural persons are implemented according to the framework of the European Union Common Foreign and Security Policy. They are considered as "one of the European Union's tools to promote the objectives of the [Common Foreign and Security Policy]: peace, democracy and the respect for the rule of law, human rights and international law".[2] According to the European External Action Service, sanctions "are always part of a wider, comprehensive policy approach involving political dialogue and complementary efforts. EU sanctions are not punitive, but designed to bring about a change in policy or activity by the target country, entities or individuals".[3] In European Union terminology, the terms "sanctions" and "restrictive measures" are used interchangeably.

7. The enactment and operation of sanctions at the European Union level involves a number of European institutions, as well as complex political and legal processes. The Council of the European Union, which is composed of government ministers from each member State, according to the policy area that has to be discussed, plays a leading role in these processes, which are described below.

8. The Council first adopts a decision under article 29 of the Treaty on European Union. The measures foreseen in that decision are either implemented at European Union or national level. Measures such as arms embargoes or restrictions on admission are implemented directly by the European Union member States, which are legally bound to act in conformity with Council decisions on the Common Foreign and Security Policy. Other measures interrupting or reducing, in part or completely, economic relations with a third country, including measures freezing funds and economic resources, are implemented by means of a regulation adopted by the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, under article 215 of the Treaty on the Functioning of the European Union. The European Parliament has to be informed. Such regulations are binding and directly applicable throughout the European Union; they are also subject to judicial review by the Court of Justice and the General Court in Luxembourg. Council decisions on the Common Foreign and Security Policy providing for restrictive measures against natural and legal persons are also subject to judicial review.[4]

III. European Union sanctions and international law

9. The European Union consistently takes a principled position that its restrictive measures, in the same way as all legal acts of European Union institutions, should comply with public international law and human rights law. For example, the 2012 guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the European Union Common Foreign and Security Policy expressly state that: "The introduction and implementation of restrictive measures must always be in accordance with international law. They must respect human rights and fundamental freedoms, in particular due process and the right to an effective remedy. The measures imposed must always be proportionate to their objective."[5]

10. This is in line with article 21 of the Treaty on European Union, as introduced by article 1 (24) of the Treaty of Lisbon, which recognizes that the European Union's action on the international scene (including the Common Foreign and Security Policy) "shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for

[2] See "Sanctions policy" on the website of the European External Action Service. Available at https://eeas.europa.eu/headquarters/headquarters-homepage/423/sanctions-policy_en.

[3] Ibid.

[4] Council of the European Union, guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the European Union Common Foreign and Security Policy, Doc. 11205/12 (15 June 2012), para. 7.

[5] Ibid., para. 9.

human dignity, the principles of equality and solidarity and respect for the principles of the United Nations Charter and international law".

11. For its part, the European Parliament has been more specific in calling for the full compliance of European Union sanctions with human rights and international humanitarian law. In a resolution adopted in 2008, the European Parliament recognized that the introduction and implementation of restrictive measures must comply with human rights and international humanitarian law, including due process and the right to an effective remedy, as well as proportionality, and must provide for appropriate exemptions to take account of the basic human needs of the targeted persons, such as access to primary education, to drinkable water and to basic medical care including basic medicines; whereas a sanctions policy has to take fully into account the standards established by the Geneva Conventions, the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights, as well as the United Nations resolutions concerning the protection of civilians and of children in armed conflict.[6]

12. In response to a question posed by the Special Rapporteur requesting clarifications on the way in which requirements and criteria of respect for international law and human rights were evaluated and applied by the relevant European Union authorities in their practice on sanctions, the European External Action Service indicated that, in terms of individual designations, due process rights in the area of sanctions, and notably the rights of the defence and the right to effective judicial protection, have developed as a result of the case law of the European courts and of the relevant legal provisions, most notably the Charter of Fundamental Rights of the European Union and article 24 (1) of the Treaty on European Union and articles 263, 267 and 275 (2) of the Treaty on the Functioning of the European Union. Consequently, legal acts of the European Union imposing sanctions now routinely include provisions on due process rights. These provisions specify, for instance, what the competent European Union body has to do when receiving requests from a listed person or entity, elaborating on review mechanisms and on the obligation for the European Union body to state reasons for imposing a sanction. Finally, the compatibility of any sanction with international law can be challenged before a competent European court.

13. The Special Rapporteur welcomes this stated adherence to international law and human rights, but notes that the guidelines are, by definition, non-binding. Furthermore, the Special Rapporteur considers it important to stress that the "international law" referred to here is understood to include not only European Union law, but also public international law in general, including the relevant provisions of customary international law and jus cogens. In this regard, the Special Rapporteur considers that it would be desirable to identify and spell out the relevant provisions of international law in the guidelines. The Special Rapporteur also wishes to stress that compliance with international law may justify a commitment by States to seek to abolish unilateral sanctions and give precedence to peaceful means of settlement of international disputes. This would be in line with States' obligations under Chapter VI of the Charter of the United Nations to settle international disputes that are likely to endanger the maintenance of international peace and security by peaceful means. Such means are listed in Article 33 of the Charter, and include negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

14. The Special Rapporteur has on several occasions pointed to the stalemate between the majority of the international community, which rejects outright unilateral sanctions (i.e. those not adopted by the Security Council), and countries initiating sanctions, which consider that they are compatible with international law.[7] The former position, according to which unilateral sanctions are incompatible with international law, was expressed in particular in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted unanimously by the General Assembly in 1970 (resolution 2625 (XXV),

[6] European Parliament resolution of 4 September 2008 on the evaluation of EU sanctions as part of the EU's actions and policies in the area of human rights (2008/2031(INI)), para. R.

[7] See, for example, A/HRC/30/45, para. 53.

annex). According to this text, no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. This principle was reiterated recently in Human Rights Council resolution 34/13, adopted on 24 March 2017, which urges all States to refrain from imposing unilateral coercive measures, and calls for their removal, as they are contrary to the Charter of the United Nations and norms and principles governing peaceful relations among States at all levels. The Council recalled that such measures prevent the full realization of the economic and social development of nations, and have an adverse effect on the full realization of human rights.

15. With regard to the official position of the European Union on the issue of unilateral coercive measures, the Special Rapporteur notes that, in 2003, the European Union made a statement before the General Assembly regarding the draft resolution on unilateral economic measures as a means of political and economic coercion against developing countries (resolution 58/197), asserting that the European Union considers that unilateral coercive measures should not be taken against any member of the international community. Such measures are not admissible.[8]

16. During his mission to the European Union institutions, the Special Rapporteur sought to ascertain whether that statement reflected the official position of the European Union institutions on the issue of international sanctions and, if so, how to reconcile that principled position with the widespread practice of European Union sanctions. According to the officials that the Special Rapporteur met during his discussions with European Union institutions, the European Union has a longstanding position on the use of autonomous sanctions, which are considered to be legitimate insofar as they are in accordance with international law and the principles of the Charter of the United Nations and adopted in pursuit of the European Union's foreign policy objectives, namely to prevent serious proliferation risks that threaten the security of the European Union or to address serious human rights violations.

17. The Special Rapporteur understands that the statement was made in a specific context, and not in relation to the European Union's policy on sanctions. He is also aware that, according to the European Union, its autonomous measures are neither of a "coercive" nor of a "unilateral" nature, since their only aim is to seek to influence a third country's policy in line with European Union objectives and values. Nevertheless, the Special Rapporteur cannot share this assessment, since it logically implies that the European Union understands its sanctions to be different from unilateral coercive measures — an assertion that is in itself quite problematic.

18. European Union sanctions are sometimes described in legal literature as "countermeasures",[9] in line with the definition formulated by the International Law Commission in its draft articles on responsibility of States for internationally wrongful acts.[10] However, officials at the Council of the European Union expressly dismissed the legal characterization of such sanctions as countermeasures during their meeting with the Special Rapporteur.[11] The Special Rapporteur cannot support this view. Being applied by an international (regional) organization without an explicit Security Council mandate, European Union sanctions cannot be legally justified under the legal framework of Chapter VII of the Charter of the United Nations, since unlike the Security Council, the Council of the European Union "has been granted no enforcement power in the field of international

[8] See http://eu-un.europa.eu/eu-presidency-statement-unilateral-economic-measures-as-a-means-of-political-and-economic-coercion-against-developing-countries.

[9] See, for example, Pieter Jan Kuijper and others, *The Law of EU External Relations, Cases, Materials, and Commentary on the EU as an International Legal Actor* (Oxford, Oxford University Press, 2015), especially chapter 6 ("EU sanctions and countermeasures"), at pp. 215 et seq.

[10] See A/56/10, paras. 76–77.

[11] Interview of the Special Rapporteur with officials of the Council of the European Union, Brussels, 22 June 2017.

peace and security".[12] To the extent that they go beyond mere "unfriendly" conduct (retorsion) and entail the disregard of obligations otherwise owed to the target(s), European Union sanctions require some other legal justification in order not to qualify as breaches of international law.[13]

19. In order to qualify as legitimate measures under international law, European Union sanctions must comply with the procedural and substantive requirements set out for "countermeasures". These include, inter alia, an obligation on the State or international organization willing to take countermeasures to notify the target State in advance of any decision to take such measures, as well as an obligation to offer to negotiate with that State.[14] It is also accepted that countermeasures would be considered wrongful if they affect obligations relating to the protection of fundamental human rights; obligations of a humanitarian character prohibiting reprisals; or other obligations under peremptory norms of general international law.[15]

20. In the same manner, sanctions may create widespread instability if they are not limited to exceptional situations of immediate and direct threat to the security of the source State (or group of States), or to universally recognized and duly evidenced wide-ranging breaches of international law or of international human rights law.[16] Such conditions are without prejudice to the lawfulness or otherwise of such measures under international law.

IV. Achievements in the field of safeguards, remedies and judicial review

21. The European Union has over time established certain important safeguards in the field of sanctions. They are described below.

A. Mechanisms for de-listing and judicial review of the restrictive measures

22. Natural and legal persons included on sanctions lists may make a request to the Council of the European Union to be de-listed. They are to be notified of the decision and of the reasons justifying the listing by means of a letter or through the publication of a notice in the *Official Journal of the European Union*. The notification informs the persons, groups and entities concerned about their right to present observations and to request a review of the decision taken by the Council as well as of their right to challenge the Council's decision before the General Court in accordance with the relevant provisions in the European Union treaties.[17] As regards the right to seek judicial review of the measures, the Special Rapporteur has already examined the relevant jurisprudence of the General Court and the Court of Justice of the European Union, and identified, in particular, certain

[12] T. Gazzini, "The normative element inherent in economic collective enforcement measures: United Nations and European Union practice", in *Les sanctions économiques en droit international/Economic sanctions in international law*, L.-A. Sicilianos and L.P. Forlati, eds. (Leiden, Martinus Nijhoff, 2004), p. 302.

[13] See A/71/287, para. 11. See also A. Tzanakopoulos, "Sanctions imposed unilaterally by the European Union: implications for the European Union's international responsibility", in *Economic Sanctions under International Law*, A.Z. Marossi and M. Bassett, eds. (The Hague, T.M.C. Asser Press, 2015), pp. 145–161, at pp. 148–149.

[14] A/56/10, pp. 57–58, art. 52.

[15] Ibid., p. 57, art. 50.

[16] It is to be recalled that "a State which resorts to countermeasures based on its unilateral assessment of the situation does so at its own risk and may incur responsibility for its own wrongful conduct in the event of an incorrect assessment", para. 3 of the commentary to draft article 49 of the draft articles on responsibility of States for internationally wrongful acts (A/56/10, pp. 329–330). See also A/71/287, para. 11.

[17] See guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the European Union Common Foreign and Security Policy, annex I, para. 11.

shortcomings and remaining issues of concern.[18] The European External Action Service has indicated that it takes full account of the case law of the European Union courts in designing and proposing legal acts imposing sanctions, and that the Council of the European Union and member States are also fully cognizant of the jurisprudence of such courts when designing and agreeing to sanctions.

B. Humanitarian exemptions

23. Humanitarian exemptions are granted on a case-by-case basis by the competent national authorities of European Union member States. The Council of the European Union made it clear that it is important "that the legal instruments on financial restrictions, restrictions on admission and other restrictive measures make provision for appropriate exemptions to take account of in particular basic needs of targeted persons, legal fees, extraordinary expenses or, where applicable, humanitarian needs or international obligations, including as host nations of international organisations or the OSCE, with regard to the various restrictive measures taken".[19] In the same manner, the European External Action Service has also clarified that in legal acts imposing restrictive measures it commonly incorporates standard humanitarian derogations and exemptions that are similar to, or sometimes even more extensive than, the humanitarian provisions in United Nations sanctions. The European Commission, however, stressed the need for the European Union to check the legitimacy of the humanitarian requests by the targeted persons, on a case-by-case basis.

24. On a related note, the Special Rapporteur appreciated that his concerns regarding the humanitarian situation in Yemen were referenced in a resolution of the European Parliament adopted on 15 June 2017, which explicitly endorsed the Special Rapporteur's position and recommendations in that respect.[20]

C. Provisions for expiration and review of the measures

25. European Union authorities, including the European External Action Service, have explained to the Special Rapporteur that autonomous sanctions are kept under regular review to assess their impact and effectiveness.[21]

26. These improvements regarding safeguards in the application of European Union sanctions represent a noticeable — if still insufficient — measure of due process for their targets, whether States or natural or legal persons. This compares favourably with other major users of sanctions that have been unwilling to annul even those sanctions that fail to respect due process requirements for targeted persons, even when legally able to do so. One can but note with concern the increasing recourse to unilateral coercive measures in international relations. It is against that background that the Special Rapporteur strongly suggests that the time has come for the international community to reaffirm some of the basic values of the rule of law, one of which is that all persons whose enjoyment of human rights has been affected by unilateral coercive measures are entitled to an effective remedy, including appropriate and effective financial compensation. Such an affirmation necessarily flows from the general principle enshrined in the Universal Declaration of Human Rights and a number of other human rights instruments. These seminal instruments assert unambiguously that everyone has the right to an effective remedy for acts deemed to be in violation of fundamental rights. There is no reason why unilateral coercive measures should be exempted from this general principle. It is a key component of the rule of law and should

[18] See A/HRC/33/48, paras. 51–59.

[19] See guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the European Union Common Foreign and Security Policy, para. 25.

[20] See European Parliament resolution of 15 June 2017 on the humanitarian situation in Yemen (2017/2727(RSP)).

[21] See guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the European Union Common Foreign and Security Policy, paras. 31–37.

benefit all victims of human rights violations, irrespective of the particular facts or context of such violations. It is worth recalling that, in target 16.3 of the Sustainable Development Goals, States have pledged to promote the rule of law at the national and international levels and to ensure equal access to justice for all.

27. Furthermore, it stands to reason that no policy of unilateral sanctions for human rights motives would be justified if the sanctions themselves have an unintended, but nevertheless egregious, adverse human rights impact on vulnerable segments of the population of the targeted country. In particular, there is a need to warn against sanctions that bring about unintended deprivations of basic rights, causing as much distress as the human rights violations they purport to remedy.

V. Outstanding issues of concern

28. European Union officials stressed on various occasions during meetings with the Special Rapporteur that the European Union had followed the United Nation's decision to refrain from imposing comprehensive embargoes, and now prioritized the use of "targeted" sanctions. The Special Rapporteur was informed that the European Union policy on sanctions had now long departed from the "total embargo approach" used in earlier sanctions programmes. Two remarks may be made regarding that assertion. The first is that sanctions, whether comprehensive or "smart", are a very blunt tool in the toolbox of policymakers, especially when they encompass financial transfers. Sanctions that have the effect of cutting access to a technical mechanism providing international financial messaging services, such as the payment system of the Society for Worldwide Interbank Financial Telecommunication, are likely to have wide-ranging adverse consequences that can be tantamount to comprehensive sanctions. The second is that it may be questioned whether multiple sanctions regimes all claiming to be "smart" do not add up to comprehensive sanctions in effect, as is the case for the 52 packets of sanctions currently targeting Syria. As one scholar put it: are we not witnessing the de facto reintroduction of comprehensive sanctions amounting to an embargo, in contradiction of the claims mentioned above?[22] It has been observed in that regard that "restrictive measures with a broad scope will almost inevitably affect the economy of the target",[23] so that the right to development may arguably be affected, and possibly other human rights.[24]

29. Finally, one would be entitled to ask whether appropriate cost-benefit analyses of sanctions are carried out before their imposition.[25] This question applies to the restrictive measures currently in force in the relations between the European Union and the Russian Federation. The Special Rapporteur was informed during his visit of the "huge losses" suffered by the agricultural sector in the European Union due to the countermeasures taken by the Russian Federation in retaliation against European Union sanctions. The representative organization of European farmers and the confederation of European agricultural cooperatives has, on various occasions, deplored the fact that these losses were attributable to a political dispute between the European Union and the Russian Federation

[22] See, for example, M. Happold, "Targeted sanctions and human rights", in *Economic Sanctions and International Law*, M. Happold and P. Eden, eds. (Oxford, Hart Publishing, 2016), at p. 90, noting the renewed use of sectoral sanctions and that consideration of their potential humanitarian impact cannot be avoided.

[23] Allan Rosas, "European Union sanctions policies: value imperialism, futile gesture politics or extravaganza of judicial control?", presentation at a seminar on European Union restrictive measures, Tallinn, 5 February 2016.

[24] For an overview of the human rights most likely to be impacted by sanctions, see, for example, A/70/345.

[25] More generally, in 2008, the European Parliament, deploring the fact that, at that time, no evaluation or impact assessment had been carried out in respect of the European Union's sanctions policy and that it was therefore extremely difficult to gauge the policy's impact and effectiveness on the ground and thus to draw the necessary conclusions, called on the Council and the Commission to carry out that evaluation work (European Parliament resolution of 4 September 2008 on the evaluation of EU sanctions as part of the EU's actions and policies in the area of human rights). It is unclear whether these lacunae have been remedied since then.

in which European Union farmers had absolutely no role or responsibility, and yet they were the ones that had to pay the high price. According to information received, European dairy, pork, beef and fruit and vegetable growers are suffering enormously from the ban on imports imposed by the Russian Federation. The trade embargo by the Russian Federation has reduced by approximately half — that is, by 5.5 billion euros — the European Union's agrifood exports to the country.[26] In that respect, it may be worth recalling what the European Parliament stated in an early resolution on sanctions in 1982: "the effects of sanctions — the disruption of trade, the loss of markets, the threat to the economic survival of firms and undertakings, and hence to jobs — often inflict financial losses and irreparable economic damage, not only on the conflicting parties on a scale out of all proportion to the desired or possible economic objectives."[27]

30. During his visit, the Special Rapporteur emphasized the need to make clear that humanitarian exemptions from sanctions, as provided for in the update of the European Union best practices for the effective implementation of restrictive measures,[28] should be mandatory and communicated to national financial institutions along with the freezing orders. This would obviate a protection gap between the time of the freezing order by the Council of the European Union and the time when the national authority decides on the request by the targeted person for a humanitarian exception to be conceded.

31. The application of restrictive measures on the basis of mere suspicion or the identification of a potential threat of hypothetical criminal conduct by the target raises serious concerns with respect to the rule of law. Sanctions also entail a paradoxical situation whereby measures such as the freezing of assets or travel bans are not decided by a court of law, and are sometimes taken on the basis of confidential and undisclosed information. It is at times argued that this approach, which is tantamount to a suspension of the rule of law, is justified by portraying the measures as provisional or preventive or as being of a quasi-administrative nature.[29] In reality, the measures may remain in force for a prolonged period of time. In such situations, sanctions thus effectively amount to the handing down of criminal sentences, without the targeted person benefiting from the procedural and substantive safeguards applicable under criminal law in all legal systems.

32. It is appreciated that the European Union authorities, according to information received, now systematically provide for a periodic review of their autonomous sanctions.[30] While the modalities of periodic reviews (and possible termination) of sanctions have been clarified to some extent by the competent European Union authorities, the Special Rapporteur is of the view that the periodic review of sanctions still does not fully address the defects identified above as regards the requirements of the rule of law and due process.

33. The Special Rapporteur noted with satisfaction the principled position of the European Union, which consistently considers the extraterritorial application of national legislation on unilateral sanctions as a breach of international law.[31] Thus, "EU restrictive

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[26] Interview of the Special Rapporteur with the Secretary-General of COPA-COGECA, Brussels, 19 June 2017. See also COPA-COGECA press release, "European farm demonstration: Copa and Cogeca to hold mass demonstration to call for action to improve drastic market situation hit by Russian crisis", 30 July 2015. Available at www.copa-cogeca.be/Download.ashx?ID=1402103&fmt=pdf.

[27] European Parliament resolution of 11 October 1982 on the significance of economic sanctions, particularly trade embargoes and boycotts, and their consequences for the EEC's relations with third countries, *Official Journal of the European Communities*, C 292, 8 November 1982, preambular para. (F), p. 14.

[28] See http://data.consilium.europa.eu/doc/document/ST-7383-2015-REV-1/en/pdf.

[29] See guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the European Union Common Foreign and Security Policy, annex I, p. 34, describing European Union restrictive measures as "preventive, non-punitive, instruments".

[30] Ibid., paras. 31–37.

[31] See guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the European Union Common Foreign and Security Policy, para. 52: "The EU will refrain from adopting legislative instruments having extra-territorial application in breach of international law. The EU has condemned the extra-territorial application of third country's legislation imposing restrictive measures which purports to regulate the activities of natural and legal persons under the jurisdiction

measures should only apply in situations where links exist with the EU. Those situations … cover the territory of the European Union, aircrafts or vessels of Member States, nationals of Member States, companies and other entities incorporated or constituted under Member States' law or any business done in whole or in part within the European Union."[32] Governments of European Union member States and European Union authorities have, in particular, expressed their unambiguous rejection of the new unilateral extraterritorial measures announced by a non-European Union country in the wake of its withdrawal from the 2015 nuclear agreement with the Islamic Republic of Iran. The Special Rapporteur considers that these measures may cause further international economic disruptions and undermine the right to development of a large number of countries.

34. In an effort to shield European economies from the effects of previous extraterritorial United States sanctions regimes, in 1996 the European Union enacted a "Blocking Statute"[33] — which is still in force — under which European Union companies and individuals are prohibited from complying with some extraterritorial sanctions regimes and may thereby benefit from the protection of their State. This instrument is intended to allow companies to recover damages arising from such sanctions from the person causing them, and nullifies the effect in the European Union of any foreign court judgments based on them. The Special Rapporteur notes that this Blocking Statute seems to have been rarely applied in practice. The European Union is to be commended for having reached a decision in May 2018 to "activate" the Blocking Statute by updating the list of United States sanctions on the Islamic Republic of Iran falling within its scope, to include those that will be reinstated after the country's withdrawal from the Joint Comprehensive Plan of Action.[34] The President of the European Commission, Jean-Claude Juncker, was quoted as saying in that context that it was the duty of the European Union to protect European business.[35]

35. Extraterritorial sanctions are not only contrary to international law, they also create adverse effects, to the extent that they seek to dissuade, often under threat of severe penalties, private parties of third countries from entering into trade or other dealings with the targeted State. Their human rights impact is aggravated in many cases by the phenomenon of overcompliance, according to which businesses and financial institutions refrain from dealings with the targets of sanctions, even when they are not required to do so under the relevant sanctions instrument, for fear of breaching these inadvertently. Such a breach, they fear, might expose them to prosecution and incur financial or criminal liability in the source State. The Special Rapporteur noted with appreciation that European Union officials whom he met during his visit shared this concern regarding overcompliance with coercive measures, and expressed their wish to find ways and means to overcome this problem.

36. The Special Rapporteur has received credible and concordant information according to which some form of pressure and conditionality in cooperation would be exercised at times by the European Union in order to induce third countries to align themselves with European Union restrictive measures. This was denied by several European Union officials; however, such allegations seem to be consonant with a resolution of the European Parliament in 2008, which states, inter alia, "that the prospect of the signing of a free trade agreement with the regions in which a target country is situated should be used as a 'carrot' and means of pressure".[36]

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of the Member States of the European Union, as being in violation of international law." This principled condemnation was reiterated by the European Commission's Service for Foreign Policy Instruments in its replies to the questions of the Special Rapporteur, 27 August 2017.

[32] See guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the European Union Common Foreign and Security Policy, para. 51.

[33] Ibid.

[34] Ibid.

[35] See Patrick Wintour and Daniel Boffey, "EU sets course for US clash with law blocking Iran sanctions", *Guardian*, 17 May 2018. Available at https://www.theguardian.com/world/2018/may/17/maersk-tankers-pull-out-of-iran-in-blow-to-nuclear-deal.

[36] European Parliament resolution of 4 September 2008 on the evaluation of EU sanctions as part of the EU's actions and policies in the area of human rights, para. 29.

37. The Special Rapporteur invites the European Union institutions to reaffirm their endorsement of a pivotal principle asserted by the Committee on Economic, Social and Cultural Rights, which asserts that when an external party takes upon itself even partial responsibility for the situation within a country (whether under chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its powers to protect the economic, social and cultural rights of the affected population.[37] The Special Rapporteur believes that this reiteration would be in line with the European Union's commitment to uphold human rights and international law.

38. In the same spirit, the Special Rapporteur advocates an intensified dialogue and interaction between Brussels and Geneva, that is between European Union institutions, and the Human Rights Council and its mechanisms. European Union member States, as well as European Union authorities in charge of the policy on sanctions, are committed to the obligations of States under the two Human Rights Covenants and other major international human rights instruments. They should also follow the guidance in the general comments issued by the Committee on Economic, Social and Cultural Rights, including general comment No. 8, which made clear that the inhabitants of a given country did not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders had violated norms relating to international peace and security.[38]

VI. Recommendations

39. The Special Rapporteur notes with appreciation the measures adopted by the European Union to limit the potential adverse impact of sanctions on the enjoyment of the human rights of targeted individuals, as well as on the rights of the population of targeted countries as a whole. These include the possibility of judicial review by national courts and the European courts; the inclusion of humanitarian exceptions; the practice of ensuring that sanctions automatically expire unless renewed; clear policies to limit the extraterritorial application of any sanctions; and the availability of blocking statutes to address the potential extraterritorial application of non-European Union sanctions on European Union States or citizens.

40. Notwithstanding these measures, the Special Rapporteur is of the view that there remains significant room for improvement. Relevant European Union institutions should clearly acknowledge the requirement that all sanctions be subject to, and in compliance with, the relevant norms and standards of international law, including human rights law. In particular, sanction regimes should be designed and implemented in accordance with the relevant principles of the rule of law, including due process protection. Existing blocking statutes should be better used to limit the extraterritorial application of non-European Union sanction regimes on European Union States, citizens and companies.

41. In the light of the above, the Special Rapporteur would like to offer the following recommendations.

42. The Special Rapporteur considers that the adoption of unilateral coercive measures is inconsistent with the obligations that the Charter of the United Nations imposes on member States, including the obligation to resolve international disputes that are likely to endanger international peace and security through resort to the dispute settlement mechanisms set out in Article 33 of the Charter. He wishes to stress once again that in his view the unilateral imposition and use of sanctions raises serious questions under the Charter and other relevant international instruments, including the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

[37] Committee on Economic, Social and Cultural Rights, general comment No. 8 (1997) on the relationship between economic sanctions and respect for economic, social and cultural rights.

[38] Ibid.

43. The Special Rapporteur is also aware that it is highly unlikely that member States will refrain from using unilateral coercive measures in the foreseeable future. In this regard, the Special Rapporteur recommends that, until the use of unilateral sanctions is discontinued, States should comply with universally accepted norms and standards of international law and international human rights law that aim to mitigate the adverse human rights impact of such measures. The Special Rapporteur recommends that the European Union explicitly adopt a binding obligation to ensure that its sanctions, and the sanctions unilaterally applied by individual European Union member States, comply with such conditions.

44. In the light of the safeguards and remedies adopted by the European Union in connection with the use of sanctions, the Special Rapporteur recommends that the European Union support efforts to ensure that such measures are adopted internationally. One way to do so would be to support the adoption of a declaration on unilateral sanctions likely to have a human rights impact and to promote the rule of law, a preliminary draft of which the Special Rapporteur intends to submit to the Human Rights Council in his next report. The rules of behaviour advocated include, inter alia, the obligation to conduct a transparent human rights assessment of coercive measures not omitting the adverse effects on segments of the population of source countries, to monitor on a regular basis the effects of implementing the measures, to ensure effective exemptions to protect basic human rights and meet essential humanitarian needs, and to guarantee due process and the availability of judicial review for victims in order to obtain remedies and redress.

45. In the light of concerns raised by European officials that unilateral sanctions may at times adversely affect human rights, or result in extraterritorial effects, the Special Rapporteur recommends that the European Union support his proposal to establish a United Nations register of unilateral sanctions likely to have a human rights impact. This is a simple, practical, viable and fair means to ensure transparency in the implementation of sanctions during the transition period. Such transparency would be helpful to the Security Council, civil society organizations and the business sector. As was stressed during his visit, a comprehensive list of sanctions and of their targets exists at the level of the European Union. However, there is need to scale up the collection of data to include all unilateral sanctions in a United Nations register, regrouping in comparable form corresponding data at the global level as reported by source and/or target countries.